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AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING FOR ALTERATION OF A BASIC SENTENCE OF IMPRISONMENT WHEN A HATE CRIME IS COMMITTED; PROVIDING FOR HATE CRIME DATA COLLECTION AND POLICE TRAINING; REPEALING A SECTION OF THE NMSA 1978.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Hate Crimes Act".

Section 2. DEFINITIONS.--As used in the Hate Crimes Act:

A. "age" means sixty years of age or older;

B. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

C. "handicapped status" means that the person has a physical or mental impairment that substantially limits one or more of that person's functions, such as caring for himself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

D. "motivated by hate" means the commission of a crime with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation or gender identity of the victim, whether or not the offender's belief or perception was correct; and

E. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

Section 3. HATE CRIMES--NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS COMMITTED BECAUSE OF THE VICTIM'S ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, AGE, HANDICAPPED STATUS, GENDER, SEXUAL ORIENTATION OR GENDER IDENTITY--

1 ALTERATION OF BASIC SENTENCE.--

2 A. When a separate finding of fact by the court or jury shows beyond a  
3 reasonable doubt that an offender committed a noncapital felony motivated by hate,  
4 the basic sentence of imprisonment prescribed for the offense in Section 31-18-15  
5 NMSA 1978 may be increased by one year. An increase in the basic sentence of  
6 imprisonment pursuant to the provisions of this subsection shall be in addition to an  
7 increase in a basic sentence prescribed for the offense in Section 31-18-17 NMSA  
8 1978. A sentence imposed pursuant to the provisions of this subsection may include  
9 an alternative sentence that requires community service, treatment, education or any  
10 combination thereof. The court may suspend or defer any or all of the sentence or  
11 grant a conditional discharge, unless otherwise provided by law.

12 B. If a finding was entered in a previous case that the offender was  
13 convicted for committing a crime that was motivated by hate, and if a separate finding  
14 of fact by the court or jury shows beyond a reasonable doubt that in the instant case  
15 the offender committed a noncapital felony that was motivated by hate, the basic  
16 sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978  
17 may be increased by two years. An increase in the basic sentence of imprisonment  
18 pursuant to the provisions of this subsection shall be in addition to an increase in a  
19 basic sentence prescribed for the offense in Section 31-18-17 NMSA 1978. A  
20 sentence imposed pursuant to the provisions of this subsection may include an  
21 alternative sentence that requires community service, treatment, education or any  
22 combination thereof. The court may suspend or defer any or all of the sentence, or  
23 grant a conditional discharge unless otherwise provided by law.

24 C. If the case is tried before a jury and if a prima facie case has been  
25 established showing that in the commission of the offense the offender was motivated  
by hate, the court shall submit the issue to the jury by special interrogatory. If the  
case is tried by the court and if a prima facie case has been established showing that  
in the commission of the offense the offender was motivated by hate, the court shall  
decide the issue and shall make a separate finding of fact regarding the issue. If the

1 court or jury determines that the offender is guilty of the crime and finds beyond a  
2 reasonable doubt that the offender was motivated by hate, the court shall include that  
3 determination in the judgment and sentence.

4 D. When a petty misdemeanor or a misdemeanor is motivated by hate,  
5 the basic sentence of imprisonment prescribed for the offense in Section 31-19-1  
6 NMSA 1978 may include an alternative sentence that requires community service,  
7 treatment, education or any combination thereof. The court may suspend or defer any  
8 or all of the sentence or grant a conditional discharge, unless otherwise provided by  
9 law.

10 Section 4. HATE CRIMES--DATA COLLECTION.--Every district attorney and  
11 every state, county and municipal law enforcement agency, to the maximum extent  
12 possible, shall provide the federal bureau of investigation with data concerning the  
13 commission of a crime motivated by hate, in accordance with guidelines established  
14 pursuant to the federal Hate Crime Statistics Act.

15 Section 5. HATE CRIMES--LAW ENFORCEMENT TRAINING.--

16 A. No later than December 31, 2003, the New Mexico law enforcement  
17 academy board shall develop and incorporate into the basic law enforcement training  
18 required, pursuant to the Law Enforcement Training Act, a course of instruction at  
19 least two hours in length concerning the detection, investigation and reporting of a  
20 crime motivated by hate.

21 B. The New Mexico law enforcement academy board shall develop a  
22 course of instruction, learning and performance objectives and training standards, in  
23 conjunction with appropriate groups and individuals that have an interest in and  
24 expertise regarding crimes motivated by hate. The groups and individuals shall  
25 include law enforcement agencies, law enforcement academy instructors, experts on  
crimes motivated by hate and members of the public.

26 C. In-service law enforcement training, as required pursuant to Section  
27 29-7-7.1 NMSA 1978, shall include at least two hours of instruction that conform with  
28 the requirements set forth in Subsection B of this section.

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1 D. Each certified regional law enforcement training facility shall  
2 incorporate into its basic law enforcement training and in-service law enforcement  
3 training a course of training described in Subsection B of this section that is  
4 comparable to or exceeds the standards of the course of instruction developed by the  
5 New Mexico law enforcement academy board.

6 Section 6. REPEAL.--Section 31-18-16.1 NMSA 1978 (being Laws 1980,  
7 Chapter 36, Section 1, as amended) is repealed.

8 Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act  
9 is July 1, 2003.

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